IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9369 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANDUBHAI B BAROT

Versus

JITU BHAGAT VIDYAVIHAR PRIMARY SCHOOL

Appearance:

1. Special Civil Application No. 9369 of 1999

MS PRITI PANDYA for Petitioner No. 1

MR BAIJU JOSHI for Respondent No. 1-2,4-8

RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/02/2004

ORAL JUDGEMENT

Pursuant to order dated 30.01.2004 passed in

Civil Application No.587 of 2004, the Party in Person is allowed to represent his own case, as he has retired the learned advocate who was representing his case earlier. By the aforesaid order the matter was ordered to be listed for final hearing today, i.e. 07.02.2004. Today, the Party in Person argued his matter and submitted that the relief prayed for in this petition is quashing and setting aside the judgement and order dated 22.09.1999 passed by the Honourable Gujarat Primary Education Tribunal, Ahmedabad (hereinafter referred to as "the Tribunal") in Appeal No.3 of 1995 and Application No.378 of 1996 that the aforesaid Appeal No.3 of 1995 and Application No.378 of 1996, be allowed as the same were wrongly disposed of by the Tribunal; that the approval order dated 14.09.1995 passed by the Administrative Officer on the management's proposal to dismiss the petitioner, be quashed and set aside; that order dated 14.09.1995 issued by the management of 'Shri Jitu Bhagat Vidya Vihar Primary School', Ahmedabad purporting to dismiss the petitioner from service be quashed and set aside; that necessary directions be issued to all the respondents to reinstate the petitioner with back wages as if the petitioner has not been dismissed at all; and to give all the benefits to the petitioner attached to his service as a teacher accordingly.

2. This Court issued rule. The learned advocate, Mr.Baiju Joshi waived service of rule for respondents no.1 & 2 and 4 to 8 and therefore, notice of rule was to go to respondent no.3 only. The rule was made returnable on 20.12.1999.

3. Affidavit in reply is filed on behalf of respondents no.1 & 2 and 4 to 8 by one, Mr.P.J. Brahmabatt, to which an affidavit in rejoinder is also filed enclosing therewith a copy of written statement which was filed before the Tribunal. The main contention raised by the petitioner-Party in Person is that the management was keeping grudge against him since 1987 which according to him aggravated in the year 1990 and as a consequence thereof a charge sheet was issued to him on 30.08.1990, to which the petitioner had filed a reply on 04.09.1990. But as the same was not found acceptable to the management, a departmental inquiry was held by the 'Inquiry Committee' consisting of three persons, wherein under the Rules, one representative of the management, Headmaster of the school and one representative of the employer were the members. The Inquiry Committee submitted its report in which the representative of the management and the Headmaster reported to the effect that, 'the charges are proved while the representative of

the teacher -- petitioner reported that, 'the charges are not proved'. That departmental inquiry continued for more than two and half years, as many as 41 sittings were held. On the basis of the report of the majority members of the Inquiry Committee, second Show Cause Notice was issued to the petitioner and thereafter the Board of the respondent school decided to dismiss the petitioner. The respondent, therefore, made a proposal on 28.07.1993, to the Administrative Officer which was accepted and on acceptance of the proposal of the management, to dismiss the petitioner, the petitioner was dismissed on 08.09.1993. The petitioner being aggrieved of that, approached the Tribunal. The petitioner filed an appeal being Appeal No.1 of 1993 and Application No.330 of 1993. From the discussion contained in the judgement of the Tribunal it is clear that the said appeal and the application were contested mainly on the ground that, 'hearings were conducted by the then 'Deputy Administrative Officer' while the order granting approval was passed by the 'Administrative Officer'. The Tribunal taking into consideration the same was pleased to allow the appeal and the application on 31.07.1995 and remanded the matter to the Administrative Officer. Pursuant to the order dated 31.07.1995, the Administrative Officer granted hearing to the petitioner and the respondents and granted the approval once again to the proposal of the management on 14.09.1995. On the approval being granted the respondents passed an order of dismissal of the petitioner on 14.09.1995. Aggrieved of that the petitioner filed the present appeal being Appeal No.3 of 1995 and also an application being Application No.378 of 1996.

4. The learned Member of the Tribunal has taken all pains to consider the contentions raised before him including that filing of written submissions by the petitioner before the Tribunal. It transpires from the judgement of the Tribunal that the petitioner concentrated only on three main points which were dealt with by the Tribunal in its judgement and order, one of which was that 'the Headmaster of the school could not have been included in the Inquiry Committee. The Tribunal after taking into consideration all the rival contentions recorded a finding to the effect that, 'according to the rules in Schedule 'F' to the Act, validity of which is upheld by the Honourable the Supreme Court of India, the Headmaster is to be included in the Inquiry Committee. The Tribunal rejected the contention of the petitioner.

5. The second contention which was pressed into

service by the petitioner before the Tribunal was that the proceedings of the Inquiry Committee were not in accordance with law as the petitioner did not get sufficient opportunity to defend himself. The learned Member of the Tribunal, after taking into consideration the material on record of the case held that the said contention also, cannot be accepted, more so in light of the fact that the departmental proceedings continued for over two and half years and the Inquiry Committee had as many as 41 sittings and there is no material on record to show that the petitioner did not get sufficient opportunity to defend himself. The Honourable Tribunal has taken pains to analyse and appreciate the submissions made by the petitioner with regard to the questions posed by different members of the Inquiry Committee.

6. Lastly the petitioner contended before the Tribunal that the charges levelled against the petitioner cannot be said to have been proved and therefore, the order of dismissal is required to be quashed and set aside and the order of reinstatement is required to be passed. The Honourable Tribunal did not find any substance in the same and ultimately dismissed the appeal and the application filed by the petitioner.

7. Taking into consideration the fact that the matter is argued by the Party in Person, this Court granted indulgence to read every paper that he wanted to read including certain letters which are though referred to in some of the annexures herein but are not on record of the case like letter dated 10.08.1990, 17.08.1990 and 23.08.1990 (referred to in Annexure 'C'). The Party in Person was also allowed to read not only the affidavit in reply, but also the affidavit in rejoinder and the written submissions which are annexed thereto. The Party in Person also contended that the written submissions which are running into as many as 15 pages are not taken into consideration by the Tribunal and therefore, the judgement and order of the Tribunal is vitiated due to non application of mind and deserves to be quashed and set aside by this Court.

8. Mr.Joshi, the learned counsel for respondents no.1 & 2 and 4 to 8 submitted that the Tribunal has taken all pains to take into consideration the rival contentions raised before the Tribunal. He further submitted that the petition is filed under Article 227 of the Constitution of India, though it is mentioned in the title to be petition under Articles 226 & 227 of the Constitution of India. Mr.Joshi submitted that the Court has to take into consideration this point while

exercising jurisdiction which will necessarily be under Article 227 of the Constitution of India as the petition is in substance against the judgement and order of the Tribunal. Taking into consideration the scope of Article 227 of the Constitution the matter be appreciated.

9. During the course of the arguments, two other matters being Special Civil Applications No.6905 of 1994 and 5098 of 1993 were referred to. The copies of the judgement and order passed on 06.03.2002 in Special Civil Application No.6905 of 1994 in Civil Application No.1524 of 2002 were made available for perusal. The same have no application to the controversy involved in the matter. Therefore, it does not affect the result of the petition.

10. Having gone through the judgement and order of the Tribunal, the relevant papers produced before the Court and the submissions made by the petitioner-the Party in Person the Court finds no substance in the matter. Hence the petition is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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